

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD
cr

CRIMINAL APPEAL No 1074 of 1995

For Approval and Signature:

Hon'ble MR.JUSTICE M.R.CALLA

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?
1 to 5 No

STATE OF GUJARAT

Versus

BHAVSHKUMAR ARJANKUMAR

Appearance:

Mr.K.C.Shah, learned Addl.P.P.
for appellant.

MS SEJAL K MANDAVIA for Respondent No. 1

CORAM : MR.JUSTICE M.R.CALLA

Date of decision: 12/11/97

ORAL JUDGEMENT

This criminal Appeal under S.378 of Cr.P.C.is directed against the order of acquittal passed by the learned Chief Judicial Magistrate, Junagadh in Criminal Case No.7288 of 1990 on 9.8.95.

In the year 1979-80 under the Central Recruitment Scheme, recruitment was notified. According to this

notice of recruitment the candidates having 61% marks in SSC Examination were to be called for interview. Such candidates, 292 in number having 61% and more marks, were called for interview. They were to appear before a Committee in the Collectorate, Junagadh. The respondent was one of the applicants, who was called for interview amongst 292 candidates. It is alleged that the respondent claimed to have obtained 490 marks out of 700 in the SSC Examination of 1977 and accordingly he was having 70% marks and on that basis he was called for interview. The name of the respondent was included in the select list at Sr.No.71 as the Committee gave him 112 marks. On that basis on 13.9.79 the respondent was given appointment as a clerk in the office of Mamlatdar, Malia Hatina. On 17.3.81 the respondent applied for change of his name in the service record through Gazette and on 12.1.82 his new name was notified as Bhaveshkumar Arjanbhai. While the respondent was discharging his duties as such, one B.N.Mehta, an Ayurvedic Doctor - Gosawala made an application before the Collector, Junagadh on 25.6.87 alleging that the respondent Faldu Fulchand Arjan K. had changed his name as Bhavesh Arjan and he had obtained appointment as Clerk on the basis of a tampered marksheet of SSC. It was alleged that in the marksheet of 1975 he had obtained only 395 marks according to which his percentage was only 56, but he was called for interview on the basis that he had obtained 70% marks. It was also alleged that later on he had replaced the marksheet of 70% by the marksheet of 56%. It was also alleged that at the time of recruitment one V.M.Lakhlani was the Supervisor - Dy. Mamlatdar and A.I. Raja was the dealing clerk. The respondent had filed a fake marksheet and had tampered with the record and the form. On the basis of this complaint, a case was registered against the respondent and the charge-sheet was filed after investigation by the Junagadh City Police Station for offences under Sections 420, 471, 201, 465 and 379 of I.P.C. The respondent was tried before the Chief Judicial Magistrate, Junagadh in Criminal Case No.7288 of 1990.

The trial court has considered the evidence and has found that according to the statement of Lakhlani, A.I.Raja was the Clerk in whose custody the record was and despite this the name of important witness like A.I. Raja was neither included in the charge-sheet nor was he examined. The trial court has found that A.I. Raja was an important witness. A.I. Raja was not even examined by the Police during police investigation. Marksheet in question, which was alleged to have been used for the purpose of committing the offence showing 70% marks in

the 1977 examination, was neither recovered nor was produced. It has also been recorded that there was nothing to show that any such marksheet had been produced. The trial court has also found that even the author of the complaint dated 25.6.87 i.e. B.N. Mehta the Ayurvedic Doctor, on the basis of which the whole case was unfurled, had also not been examined. According to the statements, which were recorded before the Police, B.N.Mehta denied that he had made any such complaint and he has said that someone else might have filed this complaint in his name. The trial court has also considered that according to the procedure, which was followed at the time of recruitment, the original record is scrutinized at the time of interviews and every candidate is supposed to produce the original marksheet at the time of the interview. It was not the case of the prosecution that at the time of interview, the respondent had produced the marksheet of 1977 showing his marks to be 70%. It has also been considered by the trial court that for the purposes of scrutiny of the marksheet, four Mamlatdars had been deputed, but not a single Mamlatdar was examined who may have scrutinized the marksheet of the respondent. Even the names of these 4 Mamlatdars were not brought on record during the course of the investigation. No such record is available even in the Collectorate. No effort had been made even to show that according to administrative procedure such a record was weeded out at such and such time and who was the person concerned for the purposes of weeding out record. The prosecution even failed to show that there was any tampering in the hands of the respondent. The prosecution failed to prove that original marksheet had been replaced or destroyed by the respondent and in the place of the marksheet of 1977, the marksheet of 1975 had been replaced and it was not proved that the respondent had tampered with the marksheet.

On the consideration of the evidence and circumstances, as aforesaid, the Chief Judicial Magistrate, Junagadh, acquitted the respondent from the offences under Sections 420, 465, 475, 471, 379 and 201 of IPC by his order dated 9.8.95.

It is given out by Ms. Mandavia that the respondent is continuing in service although he had been suspended during the pendency of the trial.

The learned Addl. P.P. was called upon to show as to what was the infirmity from which the impugned judgment suffers, but the learned Addl.P.P. failed to point out anything. The prosecution witnesses P.W.6,

P.W.7 and P.W.8 had been declared hostile. On the consideration of the oral evidence, the Court does not find that the impugned judgment suffers from any infirmity so as to warrant interference by this Court. The acquittal of the respondent is found to be in order.

Accordingly this Appeal is hereby dismissed. The bail bond of the respondent shall stand cancelled.